IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 26-07-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL No.4131 OF 2004

J.Ebeneser James ... Appellant/2nd Respondent.

-vs-

1.Sri Ganapathi Mills Co.Ltd.,
Sakthi Nagar,
Tirunelveli,
represented by
Joint Managing Director.

2.The Presiding Officer,
Labour Court,
Tirunelveli. ... Respondents/Petitioner and 1st Respondent.

Appeal against the order, dated 19.07.2002, made in W.P.No.8912 of 1995 on the file of this Court.

WA.No.8912/95: Petition presented under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the first respondent in ID.No.576/92 dated 14.7.1994 quash the same.

For appellant : Ms.Anna Mathew
For respondents 1 : Mr.R.Parthiban

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J U D G M E N T

S.PALANIVELU,J.

This matter has emerged from the following facts :

"First respondent mills is a public limited company, engaged in the production of cotton yarn. Appellant was working with first respondent in Roving Department. On 29/30.09.1991, he completed his third shift from 12.00 a. m. to 07.00 a.m. On 30.09.1991, at about 07.15

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a.m., outside the mill gate, he, along with two other co-workers assaulted another co-worker, by name, Velu, causing injuries to him. Velu belonged to D.M.K.Union, while the other three persons belonged to C.I.T.U. The said Velu was subjected to assault by them, since he allegedly uttered indecent remarks against their president Shanmuga Velayudham. Velu lodged a police complaint against the three workmen before the management as well as the police. On the strength of the complaint, a charge memo was issued to the appellant and thereafter he was suspended from service on 03.10.1991. Appellant submitted an explanation on 11.10.1991 and since it failed to satisfy the management, a domestic inquiry was ordered and conducted.

In spite of notice sent to the appellant, he did not turn up for the inquiry on the first occasion and subsequently he appeared and the inquiry was over.

On the date of examination, Velu stated that he withdrew the complaint against the three workmen and while he was quizzed over the reason for his withdrawal of the complaint, he responded that as they tendered apology, he withdrew the complaint.

On 18.11.1991, the enquiry officer submitted his finding, holding that charges against the appellant were proved. Thereafter, a second show cause notice was issued to the appellant on 22.11.1991. Since he did not submit any explanation, the management was left with no option except to dismiss the appellant from service on 19.12.1991.

The appellant raised a dispute under Section 2 A of the Industrial Disputes Act, 1947, before the Labour Officer, which ended in failure of conciliation. Hence, he filed I.D.No.207 of 1992 on the file of Labour Court, Madurai, which was transferred to Labour Court, Tirunelveli, and tried in I.D.No.576 of 1992. The said Court passed an award on 14.07.1994, directing the management/first respondent to reinstate the appellant with back wages and all attendant benefits and also continuity of service. Aggrieved over the said order of the Labour Court, the management preferred a writ petition, wherein, a learned single Judge of this Court considered the facts of the case in the light of the legal position on the subject and passed an order, reducing the punishment to one of reinstatement, without back wages for the period from 19.12.1991 to 19.11.1994. As against the said order, the appellant has come before this Court, by way of this appeal."

2. The entire issue in this case revolves around a circumstance, which is, the withdrawal of complaint by the injured Velu.

3. Ms.Anna Mathew, learned counsel for the appellant, would strenuously contend that when the finding of the domestic inquiry was formed on "no evidence", by no stretch of imagination, it could be termed that the appellant was a wrong-doer. She took us through the features,

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regarding the statements adduced by the witnesses before the enquiry officer and submitted that if the salient features of the inquiry proceedings are subjected to a close scrutiny, the Court could not come to a conclusion that the appellant behaved disorderly.

4. Per contra, Mr.R.Parthiban, learned counsel for the first respondent/management, would vehemently contend that it is not the case of "no evidence" and that even though Velu did not support the allegations contained in the complaint, he stated before the enquiry officer that he lodged the complaint.

5. For a better appreciation of the rival submissions, it has become imperative for this Court to highlight certain aspects from the inquiry proceedings, which are as under :

"While Velu appeared before the enquiry officer, for a query whether he presented the complaint, his answer was in the affirmative. For another question whether the incident alleged in the complaint was true, he responded that since they compromised the matter, he withdrew the complaint. He further stated that since the three workmen tendered apology, he was obliged to come to a compromise. In cross-examination, he told that he gave a complaint through Secretary Brahmanayagam, who obtained his signature while he was in hospital and he did not know who wrote the complaint.

On the other hand, the appellant appeared before the enquiry officer and deposed that since the complainant withdrew his complaint, he was not an offender. He further stated that he did not assault Velu and tender apology."

6. In this connection, it is profitable to cull out Clause 24 (k) of the Standing Orders of the first respondent mills, which is as follows :

> "Drunkenness or riotous or disorderly behaviour during the working hours or any act subversive of disciplinary and or efficiency."

7. Contents of a complaint, essaying commission of crime or disorderly behaviour or riotous activity or any other act injurious to the welfare, discipline and administration of a management, which would shock the conscience of the persons, who are affected in the said incident, should be supported, more particularly saying, corroborated by the person, who made it. If the contents of the complaint are not supported or stated before the competent forum by its author, then, there is no other go except to reach a conclusion that the complaint is non-est. Only when there is supportive evidence as to the allegations in the complaint, then alone, the opposite party will have an opportunity to confront the connected witness, by controverting the details, which stare against him. When the contents of the complaint are not fortified by the person, who lodged the complaint, the other party will be put to prejudice, woefully

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losing his valuable right of crossexamining the said person. If the competent authority pounces upon a conclusion against a person, who has no opportunity for cross-examination during the inquiry, ignoring the valuable right lost by him, it would be a classical instance of prejudice or injustice being caused to that person and such a prejudice on the part of the said competent authority would amount to violation of principles of natural justice.

8. In the present case, the only point available to the management is, the admission of Velu before the enquiry officer, that he lodged the complaint. While the entire materials on record are read harmoniously, it transpires that the incident stated in the complaint may not be true. This Court need not go deep into such matters. However, when the finding of the enquiry officer is found to be perverse and on the basis of which the management has taken a decision ignoring the well settled principles, the writ court can very well interfere with such a finding. As Velu had not supported the allegations in his complaint, it has to be termed that the finding of the enquiry officer was based on "no evidence".

9. Learned counsel for the management would contend that a careful perusal of inquiry proceedings would disclose that the gravity of charges against the appellant and the finding of the enquiry officer are well founded, on the basis of proper evidence available before him, and, hence, this Court could not interfere with the said finding. In support of his contention, he placed reliance upon a decision of the Hon'ble Supreme Court in Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and another, 2007 (4) Supreme Court Cases 669, wherein it was held as follows :

> "29.....Normally, when disciplinary proceedings have been initiated and finding of fact has been recorded in such inquiry, cannot be interfered with unless such finding is based on "no evidence" or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding. In the present case, four charges had been levelled against the workmen...."

10. But, in this case, it has already been observed that there was no evidence for the enquiry officer, to formulate a decision against the workman and hence the management cannot take recourse to the said decision.

11. Learned counsel for the first respondent/management also argued with reference to clause 24 (k) of the Standing Orders, contending that even though the occurrence took place outside the premises of the mills and out of working hours, since the occurrence relates to trade union activities of the workmen and also affects the discipline maintained by the management, certainly, the management can lay hands on the workmen.

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He further argued that it was appropriate for the management to initiate proceedings against the erring workman. He also cited a decision of the Hon'ble Supreme Court, rendered by three Hon'ble Judges, in Glaxo Laboratories (I) Limited v. Labour Court, Meerut, and others, 1984 (1) L.L.J.16, wherein it was held as under :

> "Keeping in view the larger objective sought to be achieved by prescribing conditions of employment in certified standing orders, the only construction that can be put of cl.10 is that the various acts of misconduct therein set out would be misconduct for the purpose of S.O.22, punishable S.O.23, if committed within the premises of the establishment or in the vicinity thereof. What constitutes establishment or its vicinity would depend on the facts and circumstances of each case."

The learned counsel also garnered support from a decision of the Hon'ble Supreme Court in Palghat BPL & PSP Thozhilali Union v. BPL India Ltd. and another, 1995 (6) Supreme Court Cases 237, in which it is ruled that misconduct is a question of fact, which has to be ascertained with reference to the situation in which it was alleged, and the attending circumstances should also be examined. The relevant portion of the said decision goes thus:

> "5..... Any act subversive of discipline committed outside the premises is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct. But when a misconduct vis-a-vis the officers of the management is committed outside the factory, certainly the same would be an act subversive of discipline. The object appears to be that workmen need to maintain discipline vis-a-vis its management. What amounts to misconduct is a question of fact. It would be decided with reference to the facts, the situation in which the act was alleged to have been committed, and the attending circumstances leading thereto."

12. We are in agreement with the learned counsel for the management on the point that if any act is committed inside or in the vicinity of the premises of an establishment, which would be subversive to the discipline and order of the said establishment, the management has got every right to initiate necessary action against the erring workmen. Further, the management cannot remain an idle spectator, when relationship between the workers gets strained, exposed by physical assault, as in this case. But, in the instant case, though there was a complaint, the contents of the same remained unestablished.

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13. Guided by the decision in Palghat BPL & PSP Thozhilali Union' case, referred to supra, when the facts of this case are considered, since misconduct is a question of fact, while the other attending circumstances are closely examined, we are at a loss to find out any point, which is favourable to the management.

14. Learned counsel for the first respondent also produced a copy of an order of a Division Bench of this Court in W.P.No.27283 of 2003, dated 27.01.2006, wherein, according to him, on identical facts, the Division Bench upheld the decision taken by the management.

15. In the said case, the writ petitioner was working as an X-Ray Technician in JIPMER, Pondicherry; on 10.07.1995, one Amudha gave a complaint to the management, stating that the petitioner misbehaved with her and, subsequently, she withdrew the complaint and also did not appear before the enquiry officer. However, taking into account all the circumstances prevailing in that case, Their Lordships came to a conclusion that non-examination of the complainant would not per se render the order of the authorities as based on no evidence or in violation of principles of natural justice, rejecting the request of the workman.

16. Every case has to be analysed on its own facts and circumstances. In the above said case, the occurrence was allegedly inside the hospital and there was a charge of intimidating the patient and forcing her to withdraw the complaint. But, here, the facts are otherwise. In this case, the complainant himself appeared before the enquiry officer and, besides withdrawing the complaint, he says that the contents were written by somebody else and that he simply inked the complaint, which pave a long way to show that he was ignorant of the contents. Hence, the above said decision is not helpful to the management.

17. Coming to the quantum of penalty imposed on the appellant, the learned single Judge had thoroughly gone through the materials and arrived at an appropriate conclusion, which, in our view, does not warrant any interference. Simultaneously, it has to be borne in mind that though there was "no evidence" to place reliance upon the contents of the complaint, still, since the complainant Velu had admitted the lodging of the complaint against the appellant, one should take a view that the individual concerned, namely, appellant should give no room for lodging of such a complaint against him. Considering the said aspect, we are of the considered opinion that denial of back wages to the appellant is perfectly justified. As such, the order passed by the learned single Judge stands confirmed and this appeal does not merit consideration.

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18. Writ Appeal is dismissed. No costs.

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Asst. Registrar.

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Sub Asst. Registrar.

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To

The Presiding Officer,
Labour Court,
Tirunelveli.
+ 1 CC To Ms.R.Vaigai, Advocate SR NO.46168

+ 1 CC To Mr. R.Parthiban, Advocate SR NO.46529

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